

**FEDERAL COMMUNICATIONS COMMISSION  
LOCAL AND STATE GOVERNMENT ADVISORY COMMITTEE**

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June 10, 2002

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The Honorable Michael K. Powell, Chairman  
Federal Communications Commission  
The Portals  
445 12<sup>th</sup> Street, S.W., Room 8-B201  
Washington, D.C. 20554

*Re: Rights of Way Issues and Request for Formal Proceeding Filed  
By Industry Rights of Way Working Group*

Filed as *Ex Parte* Submission in GN Docket No. 00-185 and CS Docket No. 02-52, CC Docket No. 96-98 and WT Docket No. 99-217, and CC Docket 98-146

Dear Chairman Powell:

The LSGAC reaffirms its commitment to work with the Commission and all interested parties to address the complex issue of public rights of way management and regulation as it impacts telecommunications policy. As you know, this issue involves legal, practical, and political complexities. In response to your letter of April 1, 2002, which asked us to become more involved in a discussion with the interested parties regarding these issues, the LSGAC invited the Industry Rights of Way Working Group ("Working Group") to our May 17, 2002 meeting. As stated in the Working Group's ex parte letter dated May 24, 2002 and the LSGAC's ex parte letter dated May 20, 2002, this was a productive discussion and an important first step in what we hope will lead to an even more productive dialogue. Importantly, both sides recognized the low level of trust that currently exists, and made a commitment to work toward first achieving "small" areas of agreement, in order to build on that level of trust, prior to tackling the more difficult issues. In my letter dated May 22, 2002 to Scott Thompson, the LSGAC outlined its understanding of the next steps in this discussion, and invited the Working Group to join us again for a series of meetings in July. We remain hopeful that the Working Group will accept this invitation, although to date we have had no response.

The primary purpose of this letter is to express the LSGAC's collective surprise at the Working Group's request that the Commission commence a formal proceeding regarding rights of way practices, and that the Commission directly intervene and resolve these issues. We offer our recommendation in response to that request.

At the May 17<sup>th</sup> LSGAC meeting the Working Group gave no indication of an attempt to commence a Commission proceeding at this time. As I have stated, LSGAC has received no response to my letter to the Working Group dated May 22<sup>nd</sup>, which also asked the Working Group to respond if my letter did not accurately represent the status of our discussions. Yet to the Commission, the Working Group says "we've had one meeting. Now let's commence the formal proceeding and impose the federal solution." With all due respect, it appears to us that the Working Group has paid nothing more than lip service to your request that the parties work collaboratively in an attempt to resolve these issues. It is very difficult for parties to communicate if they are not willing to reach out and commit to working through difficult issues. We are troubled that the Working Group would use an ex parte letter about a meeting that was supposed to strengthen communications as a vehicle to bypass future communications and focus on a federally imposed regulatory mandate.

Mr. Chairman, after receipt of your April 1<sup>st</sup> letter, I contacted Dane Snowden, Chief of the Consumer and Governmental Affairs Bureau, and asked if our proposed invitation to the Working Group was an appropriate response to your request. Mr. Snowden indicated that the invitation and the intent to work together on these issues was, in his opinion, precisely what you had in mind. As you know, the LSGAC has on previous occasions worked with wireless industry representatives on criteria for zoning moratoria and with the broadcasters regarding zoning issues relating to digital television facilities. Both discussions took place over a number of months. While one of those experiences could be considered more successful than the other, we strongly believe that both were successful in that the discussions helped educate the LSGAC, the industry and FCC Staff, and gave the Commission a better understanding of how to proceed even on those issues that could not be resolved. However, the Working Group has decided, after only one meeting, that it should seek the initiation of a formal proceeding to impose a federal solution upon these issues rather than making a commitment to consider the positions of all parties in good faith discussions. While the LSGAC can most certainly provide numerous substantive arguments to address the substance of the Working Group's claims, we strongly believe that a proceeding involving the filing of comments and pleadings in an adversarial manner will be counterproductive to the goals stated in your April 1<sup>st</sup> letter.

The LSGAC remains committed to open discussions with the Working Group, the Commission and its Staff, and any other interested parties to address rights of way issues. We remain hopeful that the Working Group will respond to my May 22<sup>nd</sup> letter and agree to continue these discussions in July. The LSGAC strongly recommends that the Commission respond to the Working Group's request by making its own request that the Working Group continue to discuss these issues in a good faith, collaborative effort, and that the Commission **not** consider any formal proceeding with respect to rights of way management or regulation until after you have allowed a reasonable period of time for those discussions to take place.

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Mr. Chairman, the LSGAC is your Advisory Committee. If your direction for us has changed, we would appreciate hearing from you in that regard. To the extent that it has not, we strongly urge the Commission not to commence a formal proceeding involving rights of way issues until the parties have had an opportunity to engage in comprehensive good faith discussions regarding all of the issues you raised in your April 1<sup>st</sup> letter.

Very truly yours,

Ken Fellman, Chairman  
Local and State Government Advisory Committee

KSF/eaj

cc: Honorable Kathleen Q. Abernathy, Commissioner

Honorable Kevin J. Martin, Commissioner

Honorable Michael J. Copps, Commissioner

Dr. Emily Hoffnar

LSGAC Members and Staff

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K. Dane Snowden, Bureau Chief -- Consumer and Governmental Affairs Bureau